

# Terrorism: A Dysfunctional Quagmire Over the Concept

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**Abstract:** One of the most contentious questions in international politics is the question of the definition of terrorism. Perhaps one of the better-known aphorisms is that “one man’s terrorist is another man’s liberation fighter.”<sup>1</sup> It is not accidental that this aphorism emerged within the context of the liberation struggles in Southern Africa in which the settlers/colonial oppressors described freedom fighters as terrorists and created the impression that the liberation armies were rebels without a just cause. A definition seems controversial for reasons other than conceptual issues and problems. Because labelling actions as terrorism promotes condemnation of the actors, a definition may reflect ideological or political bias

## Introduction

One of the most contentious questions in international politics is the question of the definition of terrorism. Perhaps one of the better-known aphorisms is that “one man’s terrorist is another man’s liberation fighter.”<sup>2</sup> It is not accidental that this aphorism emerged within the context of the liberation struggles in Southern Africa in which the settlers/colonial oppressors described freedom fighters as terrorists and created the impression that the liberation armies were rebels without a just cause. A definition seems controversial for reasons other than conceptual issues and problems. Because labelling actions as terrorism promotes condemnation of the actors, a definition may reflect ideological or political bias.<sup>3</sup> Given such considerations, all of which discourage attempts to define terrorism, it is not surprising that Laqueur<sup>4</sup> argued that:

A comprehensive definition of terrorism... does not exist nor will it be found in the foreseeable future to argue that terrorism cannot be studied without such a definition is manifestly absurd.

The United Nations High-Level Panel on Threats, Challenges and Change noted that "lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image."<sup>5</sup> Even seven years ago, Thomas J. Badley had observed and it is still (partially)<sup>6</sup> true despite multiple resolutions and international conventions, the UN have, for the moment, resigned itself to the fact that it is impossible to reach agreement on a common definition."<sup>7</sup> An analysis of several definitions advanced for the concept both under international law, and municipal Cameroonian law amongst others will be now be reviewed.

## General Discussions

Definitions from international conventions, regional conventions as well as Cameroon 2014 law will be the focus of this article. When the United Nations was established after the Second World War, it could have built on the work of the League of Nations, which in 1937 had tried to define “acts of terrorism” as all “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of

<sup>1</sup> Luigi Bonanate, “*Dimensioni Del Terrorismo Politico*” 101 (Franco Angeli Milano ed., 1979) (translated from Italian by author, Alex Schmid).

<sup>2</sup> Luigi Bonanate, “*Dimensioni Del Terrorismo Politico*” 101 (Franco Angeli Milano ed., 1979) (translated from Italian by author, Alex Schmid).

<sup>3</sup> Rubenstein, E. Richard, *Alchemists of Revolution*.(London: IB. Tauris, 1987)

<sup>4</sup> Laqueur, Walter, *Terrorism*. (London: Weindenfield and Nicolson, 1977)p.11

<sup>5</sup> Report of the Secretary-General's High-Level Panel, U.N. GOAR, 59th Session., Agenda Item 55, at 159, U.N. Doc. A/59/565 (2004).

<sup>6</sup> There is in fact a definition in the International Convention for the Suppression of the Financing of Terrorism, of which more than two thirds of all Member States (134 ratifications in mid-March 2005) have become parties, and there is also a draft definition for a comprehensive convention elaborated in the Ad Hoc Committee on Terrorism. Both of which are discussed later in this paper.

<sup>7</sup> Thomas J. Badley, *Defining International Terrorism: A Pragmatic Approach*, 10 Terrorism and Political Violence 90 (1998).

particular persons, or a group of persons or the general public”.<sup>8</sup> However, the November 16, 1937 League of Nations Convention for the Prevention and Punishment of Terrorism never received sufficient support to enter into force and was not revisited when the United Nations Charter was written in 1945. The United Nations started its debate on terrorism as late as 1972, when the terrorist attack at the Munich Olympic Games served as a wakeup call to the international community. In 1972, the General Assembly passed a resolution with the unusually long title of “Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair, and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.”<sup>9</sup> An Ad Hoc Committee on International Terrorism was established, which in turn consisted of three sub-committees, with one sub-committee dealing with the problem of defining terrorism. While seven draft proposals were submitted by different groups of nations, no consensus could be reached.

The Non-Aligned Group defined terrorism as *acts of violence committed by a group of individuals which endanger human lives and jeopardize fundamental freedoms, the effects of which are not confined to one state*.<sup>10</sup> This definition does not affect the inalienable right to self-determination of people subjected to colonial and racist regimes. Other states made similar distinctions. China, for instance, distinguished terrorism from freedom fighting as violent resistance was permissible if the ruler who disregards and violates most basic tenets of natural justice; “*The Confucian tradition taught that in cases of extreme tyranny, people are expected to resist the ruler*”.<sup>11</sup> As a result of such divisions, no resolution on the definition of terrorism could be adopted, and after six years the committee was phased out. In the United Nations, the issue of defining terrorism remained shelved until the end of the Cold War.<sup>12</sup> In 1994, the General Assembly reached consensus on the criminal nature of terrorism, declaring it to be “criminal and unjustifiable”<sup>13</sup>

The United Nations Declaration on Measures to Eliminate International Terrorism (1994)<sup>14</sup> gives an embracing yet not all acceptable definition of the concept. It was adopted in 1994 by the United Nations General Assembly.<sup>15</sup> This instrument defines terrorism as:

*Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or a particular group for political purposes. These acts are in any circumstances unjustifiable, whatever the consideration, whatever the considerations of a problem.*<sup>16</sup>

This definition resolves the problem of subjective view surrounding the notion of terrorism. It has often been said that what constitute terrorism lies in eyes mind of the beholder: hence the phrase one man’s

<sup>8</sup> Convention for the Prevention and Punishment of Terrorism, 19 League of Nations O.J. 23 (1938). The Convention, which never entered into force, was drafted in response to the assassination of King Alexander I of Yugoslavia in Marseilles in 1934.

<sup>9</sup> G.A. Res 3034, U.N. GAOR 6th Comm., 27th Sess., U.N. Doc. AIRES/3034 (XXVII)

(1972). On December 8, 1972, the first Ad Hoc Committee on Terrorism was established (G.A. Res. 3034) by the United Nations General Assembly; a second Ad Hoc Committee on the issue was established on December 17, 1996 (G.A Res. 51/210). Ghislaine Doucet, Terrorism: Search for a Definition or Liberticidal Drifting?, in Terrorism, Victims, And International Criminal Responsibility 280 n. 12 (Ghislaine Doucet ed., 2003).

<sup>10</sup> Speech by H.E Mr. Eshagh Alehabib, Ambassador and Deputy Permanent Representative of the Islamic Republic of Iran On behalf of the Non-Aligned Movement Before The Sixth Committee of the 75th Session of the United Nations General Assembly On "Measures to eliminate international terrorism" (Agenda item 114) New York, 6 October 2020

<sup>11</sup> Du Gangjian and Song Gang, *Relating to Human Rights to Chinese Culture: The Four Paths to the Confucian Analects and The Four Principles of Benevolence*, in Human Rights and Chinese values, 34, 44-49(Michael C. David (ed) 1995).

<sup>12</sup> See Kshitij Prabha, Defining Terrorism, 24 Strategic Analysis 125 (2000), available at <http://www.ciaonet.org/olj/sa/sa-apr00prk01.html>. Lastly viced November 16, 2020.

<sup>13</sup> The United Nations General Assembly Resolution on Measures to Eliminate International Terrorism 1994.

<sup>14</sup> Declaration on Measures to Eliminate International Terrorism, U.N. GAOR, 49th Sess., 84th plen. mtg., U.N. Doc. A/RES/49/60 (1994). 30 Id.

<sup>15</sup> This Article provides: 1. The action required to carry out the decisions of the Security Council for the maintenance of International peace and security shall be taken by all the members of the united nations , or by some of them as the security council may determine. 2. Such decisions shall be carried out by the members of the United Nations Security council directly and through their actions in the appropriate international agencies of which they are members.

<sup>16</sup> A/RES/49/60,9 December 1994.

terrorist is another man's freedom fighter.<sup>17</sup> The resolution makes it clear that terrorist acts cannot be justified whatever the situation. This implies that acts committed in pursuit of the right to self-determination and national liberation movements and oppressive regimes are not excluded from the crime of terrorism. The resolution also calls on States to refrain from organizing, participating or instigating such criminal acts in the territory of other states. It provides for International Cooperation between states to curb terrorism especially the sharing of useful information. Pursuant to the resolution, states are called upon to prosecute or extradite perpetrators of terrorist acts in accordance with their national law. Significantly, states are enjoined to engage and conclude bilateral, regional and multilateral agreements so as to give effect to the resolution<sup>18</sup>

The State Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by who ever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States.<sup>19</sup> The definition discussion was resumed in 1996 when an *Ad Hoc* Committee on Terrorism was established and charged with drafting a number of Conventions against various aspects of terrorism, including a Comprehensive Convention which would supplement or replace the existing sectoral Conventions.<sup>20</sup>

Another important United Nations definition was posited by the *Ad Hoc* Committee on Terrorism in Article 2 of the Draft Comprehensive Convention.<sup>21</sup> This *Ad Hoc* Committee considers a person to be guilty of the offence of terrorism if that person commits an offence within the meaning of this Convention, *by any means, unlawfully and intentionally, causes: (a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.*<sup>22</sup> In the wake of the September 11, 2001 terrorist attacks, in November 2001, the United Nations came very close to a definition from the *Ad Hoc* Committee on Terrorism's discussion on a Comprehensive Convention against International Terrorism. The spirit of compromise which could be found with many negotiators did, however, stumble in the light of resistance<sup>23</sup> by the member Organization of the Islamic Conference, which

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<sup>17</sup> Boaz Ganor, *Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?* (Aug. 1998), at <http://www.ict.org.il/articles/define.htm>. Lastly visited July 15, 2020.

<sup>18</sup> *Ibid*, A/RES/49/60,9 December 1994.

<sup>19</sup> *Ibid*, Id. In the same declaration it is noted that "Criminal acts intended or calculated to provoke a state of terror in the general public ... are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them."

<sup>20</sup> Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996." G.A. Res. 51/210, U.N. GAOR, 51st Sess., U.N. Doc. A/RES/51/210 (1996). The understanding which its current chairman brings to terrorism can be gauged from the following statement: "the common element in all acts of terrorism is the toll extracted in terms of innocent human lives by the systematic use of tactics of shock, physical intimidation and terror." Amrith Rohan Perera, *International Terrorism 1* (New Delhi: Vikas,1997).

<sup>21</sup> Measures to Eliminate International Terrorism: Report of the Working Group, U.N. GAOR 6th Comm., 56th Sess., Agenda Item 166, at 16, U.N. Doc. A/C.6/56/L.9 (2001).

<sup>22</sup> While this draft text correctly identifies intimidation of the public and bringing pressure to bear on state authorities to accede to political demands as key purposes of terrorism, it does not address a major objective of non-state terrorism, namely, to bring or keep a particular issue in the forefront of public consciousness by means of perpetrating acts of violence that the news media cannot ignore. The idea of "propaganda by the deed" is, in my view, central to terrorism. It is a view that has still not received the place it deserves. In a dissertation on Israel's Counter-Terrorism Policy, Boaz Ganor, Director of the International Policy Institute for Counter Terrorism, concluded that "the most flagrant failure of Israel's counter-terrorist warfare was that it did not perceive terrorism as a psychological war over national morale." Boaz Ganor, *Israel's Counter-Terrorism Policy: 1983-1999* (Sept. 15, 2002), at <http://www.ict.org.il/articles/articleDet.cfm?articleid=447>.

<sup>23</sup> Arthur M. Loureiro, Can Terrorism be Politically (Ethically) Justified?: A Philosophical Approach, available at <http://ontology.buffalo.edu/smith/courses/01/rrtw/Loureiro.htm> (quoting Professor Richard E. Rubinstein of the Center for Conflict Analysis and Resolution at the George Mason University); John V. Witbeck, "Terrorism": The Word Itself Is Dangerous, *International Herald Tribune*, Feb 18, 2004; James Bovard, *Terrorism And Tyranny 7* (2004) (quoting Brian M. Jenkins)

rejected an Australian compromise definition because it would not exempt national liberation movements fighting foreign occupation such as the Israeli occupation of Palestinian land.<sup>24</sup>

Another fundamental issue that gave rise to discussion in the General Assembly and the *Ad Hoc* Committee was, regardless of whether or not the violent acts carried out by individuals, groups and organizations could be labelled terrorism, whether certain activities of states, executed by their governments, should also be covered by the term. It turned out that the majority of states which wanted to arrive at a common definition, preferred to limit the application of the term to individuals and groups. However, a number of states and observers regard themselves as victims of state- or state-sponsored terrorism.<sup>25</sup> In order to bridge the gap, the language of the United Nations often uses the elastic formula “terrorism in all its forms and manifestations”.<sup>26</sup>

International Convention for the Suppression of the Financing of Terrorism in its Article 2, defines the term as:<sup>27</sup> *Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully or wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*

- (a) *An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;*<sup>28</sup> or
- (b) *Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.*

This definition sounds more commendable. The use of the word ‘anyone’ can be taken to refer to both a private individual or a public body or government official. This Article extends the scope of the Convention to legal entities such as companies. The phrase ‘by any means, directly or indirectly’ implies that the mode of acquiring the funds by a terrorist is immaterial. What is imperative is the intention or knowledge that is connected to terrorism. Article 2(1) (b) addresses acts intended to cause deaths or serious bodily injury on certain category of persons (citizens, persons not taking part in arm conflict for the purpose of (i) intimidating a population, (ii) compelling the government or organisation to do or abstain from doing any act. A criminal offence must have two ingredients; *Actus reus and Mens rea*. The actus reus in this definition is the act causing death or serious bodily injury and threat (intimidation and compelling) while the *Mens rea* (mental element) will be the intention to cause death or serious bodily injury and intention of threatening the category of people mention within Article 2(1)(b). The Convention fails to define a ‘civilian’ and ‘other persons not taking an active part in the hostilities in a situation of armed conflict. It is not clear who is excluded.

In this context, does the use of violence against police officers and government officials who implement the oppressive policies of a government amounts to terrorism?<sup>29</sup> Intention is fundamental as per the definition of terrorism-financing. The question that arises is whether it is the intention to carry acts of terrorism or cause damage? In a prosecution resulting from the September 2001 attack, the German

<sup>24</sup> Edith M. Lederer, *Annan Hopes UN Will Approve Comprehensive Treaty Against Terrorism*, San Bernadino SUN, Jan. 25, 2002, available at <http://63.147.65.31/social/terrorist/0102/25/terror17.asp>.

<sup>25</sup> Andreas Zumach, *Definitionsstreit bei der UN-Generalversammlung: Was ist eigentlich Terrorismus?* DIE PRESSE (VIENNA), Oct. 6, 2001.p5

<sup>26</sup> A typical statement for example is that Pakistan "condemns terrorism in all its forms and manifestations, including State terrorism, which is the most ignoble form of terrorism." Report of the Secretary-General on the Measures to Eliminate International Terrorism, U.N. GAOR, 55th Sess., Agenda Item 166, at 56, U.N. Doc. A/55/179 (2000).

<sup>27</sup> International Convention for the Suppression of the Financing of Terrorism, U.N. GAOR 6th Comm., 54th Sess., Agenda Item 160, U.N. Doc. A/RES/54/109 (2000).

<sup>28</sup> The reference in Article 2 to an annex refers to the eleven other international conventions and protocols which the United Nations or organizations belonging to the wider United Nations system have adopted since 1963, such as the International Civil Aviation Organization. These sectoral conventions and protocols outlaw a number of acts. For further reading, see For the text of the international and regional instruments against terrorism, See United Nations, Office Of Legal Affairs, International Instruments Related To The Prevention And Suppression Of International Terrorism, U.N. Sales No. 01.V.3 (2001) (Hereinafter International Instruments).

<sup>29</sup> H., Tofangsaz., “Criminalization of Terrorist Financing: From Theory to Practice”, *New Criminal Law Review*, 2018, Vol.21, No.1, p.71.

authorities prosecuted Mounir El Motassadeq, an Al-Qaeda associated group called Hamburg cell headed by Mohamed Atta. The Upper Regional Court did not find Motassadeq guilty of death or persons in the World Trade Center Towers and in the Pentagon. It was based on the fact of lack of sufficient evidence he knows Atta and his colleagues intended to cause such deaths. From the forgoing of this case, mere membership does not constitute an act of terrorism, such membership must be accompanied by intention to cause damage then criminal responsibility can arise. In the 2002 Hotel Paradise bombing as cited by Kenyan experts, the court acquitted the defendant despite accepting that the prosecution had proven they were associated in Al-Qaeda with the suicide bombers with general intention to carry out certain unlawful acts.<sup>30</sup>

In the court's view, a high standard of specific knowledge and physical involvement was required to make persons who did not physically participate in the bombing criminal capable:

... the accused and suicide bombers ought to have met and prearranged the plan to execute the unlawful purpose i.e., the bombing of Paradise Hotel and the killing of the fifteen deceased persons and that they were present at the scene of the killing to be deemed to have committed the offence.<sup>31</sup>

Criminal Acts identified in United Nations Conventions and Protocols Against Terrorism include: acts of hijacking, acts of aviation sabotage, unlawful acts of violence at airports, unlawful acts against the safety of maritime navigation, unlawful acts against the safety of fixed platforms located on the continental shelf, crimes against internationally protected persons (such as the kidnapping of Diplomats), acts of unlawful taking and use of nuclear material, acts of hostage taking, acts of terrorist bombings, Acts of support for front organizations serving as financial conduits for terrorist organizations.<sup>32</sup>

The European Convention on terrorism defines the act in its Article 1(a)-(f) as thus: (a) *an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970*; (b) *an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971*; (c) *a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents*; (d) *an offence involving kidnapping, the taking of a hostage or serious unlawful detention*; (e) *an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons*; (f) *an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence*. And also states expressly that for the purposes of extradition between Contracting States, none of the above offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives

However, this European Convention on the Suppression of Terrorism defines terrorism solely based on the methods of violence the perpetrator employs, and explicitly removes political judgment of the acts by defining most violent acts as “non-political” (regardless of the perpetrator's claimed motive). Thus, in Article I, the Convention defines as terrorism any offenses, inter alia, “involving the use of a bomb, grenade, rocket, automatic firearm, or letter or parcel bomb if this use endangers persons,” a definition that may fail to circumscribe the offense adequately.

The Arab Convention on the Suppression of terrorism in its Articles 1 and 2 defines terrorism in both broader and narrower dimensions than those found in other international instruments; broader in the sense that there is no explicit minimum level of harm required and in that it includes “*any offence punishable by domestic law which is committed in furtherance of a terrorist objective*”<sup>33</sup> and narrower in that it excludes “cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination.”<sup>34</sup> The Arab Convention on the suppression of terrorism in its Article

<sup>30</sup> United Nations Office on Drugs and Crime, Vienna Digest of Terrorist Cases, United Nations, New York, 2012, p.7.

<sup>31</sup> Opinion of the court in *Republic v. Aboud Rogo Mohamed & ors*, Criminal case No. 793 of 2010 in the High Court of Kenya at Nairobi.

<sup>32</sup> For the text of the international and regional instruments against terrorism, see United Nations, Office of Legal Affairs, International Instruments Related To The Prevention And Suppression Of International Terrorism, U.N. Sales No. 01.V.3 (2001).

<sup>33</sup> Art. 1(3) of the Arab Convention on the Suppression of Terrorism.

<sup>34</sup> Art. 2, Art. 3(1) of the OAU Convention on the Prevention and Combating of Terrorism similarly excludes struggle for self-determination or liberation.

1(3) defines terrorism as ‘any act or attempted offence committed in forbearance of a terrorist objective in any of the contracting states, or against their national, property, or interests, which is punishable by their domestic laws. The offences stipulated in the following conventions except where conventions have not been ratified by contracting states or where convention has been excluded by their national legislation, shall also be regarded as terrorists offence: (a) The Tokyo Convention on offences and certain other acts committed on board Aircraft of 14 September 1963; (b) The Hague Convention for the Suppression of unlawful seizure of Aircrafts of 16 December, 1970; (c) The Montreal Convention for the Suppression of Unlawful Acts Against the safety of Civil Aviation of 23 September 1971 and the protocol thereto of 10 May, 1984; (d) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December, 1973; (e) The International Convention against the Taking of Hostages of 17 December, 1979; (f) The provisions of the United Nations Conventions on the Law of the Seas of 1982, relating to piracy in the High Seas.

However, The Arab Convention, while condemning terrorism, takes a uniquely restrictive approach in defining it, stating that offenses committed against the interests of Arab states are “terrorist offenses,” while offenses committed elsewhere or against other peoples or interests are not. It is clear in Art. 1(3) as it sees “terrorist offence” as any of several defined violent actions that occur “in any of the Contracting States, or against their nationals, property or interests”. The Convention further defines as legitimate non-terrorist “all cases of struggle by whatever means, including armed struggle,” unless such struggles “prejudices the territorial integrity of any Arab State.”<sup>35</sup> As per the Arab League, Article 2(a): “All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.”

The Algiers Convention defines terrorism in the following ways: (a) “any act which is a violation of the criminal laws of a state party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person. Any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: (i) ‘intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles’ ; or (ii) ‘disrupt any public service, the delivery of any essential service to the public or to create a public emergency’; or (iii) ‘Create general insurrection in a state.(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i)-(iii)’<sup>36</sup>

However, like most definitions, what constitutes terrorism in the AU Convention is determine by the state. It empowers the state to determine a terrorist threat and criminalize and sanction it. The state has the prerogative to proscribe an act, which is deemed harmful, and can declare it to be a crime. The state also assumes the right to punish the offender. Since the state defines crime, the question arises whether states can commit crimes, and, by implication, engage in terrorism.<sup>37</sup> The Algiers convention foresees the possibility of state terrorism but this is limited to inter-state terrorism where a country might host or sponsor terrorist groups. It is blinded to states undertaking (subtly or overtly) terrorist acts against its population. Such possibility cannot be ruled out especially in context of autocratic democracies practiced in most African countries. Moreover, the definition of terrorism under the OAU convention, failed to discuss the motive behind terrorist acts despite the importance of the underlying causes of violent act for determining whether or not such violent acts constitute terrorism acts. The definition of terrorism under OAU Convention has been criticized for being too broad and lacking clarity and precision.<sup>38</sup> As per a report by the international

<sup>35</sup> Art2(a) of the Arab Con. on terrorism.

<sup>36</sup> Article 1(3)(a)-(b) of the OAU Convention on the Prevention and Combating of Terrorism.

<sup>37</sup> Alex P. Schmid(2004) Framework for Conceptualizing Terrorism, Terrorism and Political Violence, 16:2, 192-221, DOI:10.1080/095446550490483134.

<sup>38</sup> ‘Human Rights Violations Sub-Saharan African Countries in the name of Counter-Terrorism: A High Risk Situation’ Counter-Terrorism Measures and Human Rights: Key for Compatibility International Federation for Human Rights (November 2007-N 483/2) p-6.

federation for human right (FIDH), the lack of a narrow and accurate definition for terrorism under the OAU Convention opens the door for state to potentially label nonviolent act conducted by opposition groups as terrorist acts.<sup>39</sup> Reasonably, the Organization of the African Union, Article 3: “Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.” This distinction by the OAU’s definition is orchestrated by the history of the continent. The African which has undergone colonization and the struggle against such occupation and domination shall by no means be characterizing as Terrorism.

Cameroon passed Law N° 2014/028 of 23rd December 2014 on the Suppression of Acts of Terrorism after ratifying the Algiers convention on the prevention and combatting of terrorism of 1999 and its 2004 optional protocol. Section 2(a-c) of this law defines acts of terrorism as:

*Whoever, acting alone as an accomplice or accessory, commits or threatens to commit an act likely to cause death, endangers physical integrity, causes bodily injury or material damage, destroys natural resources, the environment or cultural heritage with the intend to:*

*a. Intimidate the public, provoke a situation of terror or force the victim, the government and/or a national or international organization to carry out or refrain from carrying out an act; adopt or renounce a particular position;*

*b. Disrupt the national functioning of public services, delivery of essential service to the public to create a crisis situation among the public;*

*c. Create wide spread insurrection in the country; ....*

*d. Shall be punished with the death penalty.*

This definition has raised criticisms from human rights activists, politicians as well as academicians. This provision does not only qualify certain conducts as expressions of terrorism, but also provides for punishment. Chemuta<sup>40</sup> argues that it was wrong for a bill which infringes on the rights of citizens to go through Parliament. Before the promulgation of the bill into law, Njong<sup>41</sup> argued that a second reading of the bill would have given MPs an opportunity to abrogate Article 2 of the law that remains an affront to civil liberty in the country.

The definition of terrorism here presents an angelic perception of the state as the “good guy” that cannot be responsible for acts of terrorism. The definition is rather parochial in its belabored emphasis on the “offense” of terrorism. Social science has sufficiently illustrated that crimes are up shoots of deep rooted fractures of the social fabrics of the state. With specific regards to the crime of terrorism, Elu and Price, building on the theory of deprivation, argue that poverty, corruption, unemployment, and other forms of social injustices have lured many young people to buy into deadly extremist ideologies.<sup>42</sup> The Cameroon law also gives a rather vague definition of an ‘act of terrorism’. It includes not only kidnapping with terrorist intent, financing terrorist or recruiting for terrorist organization, but also “any activity which can lead to a general revolt of the population or disturb the general functioning of the country . As per Section 11 of the law on terrorism, the duration of remand in custody shall be fifteen days renewable upon the authorization of the State Prosecutor. This provision violates Law N°2005 of 27 July 2005 on the Criminal Procedure Code which defines the duration of remand in custody during criminal proceedings. The period is stipulated in Sections 119-120 of the Criminal Procedure Code. Section 8 of Law No. 2017/012 of 12 July 2017 to lay down the code of military justice in Cameroon gives the military tribunal exclusive jurisdiction over terrorism cases (S.8(c)). Hitherto now, the military tribunals had jurisdiction to try offences of purely military nature, provided for in the “code de justice militaire” governed by Ordinance No 72 of August 26th

<sup>39</sup> William G O’Neill Human Rights, the United Nations and fighting Terrorsrm.p-12.

<sup>40</sup> Chairman of the national commission for human rights and freedom in the Cameroon journal newspaper of 19<sup>th</sup> December 2014.

<sup>41</sup> Secretary of the social democratic front parliamentary group in the post newspaper of 19<sup>th</sup> December 2014.

<sup>42</sup> Elu, Juliet, and Gregory Price. “Causes and Consequences of Terrorism in Africa”. *The Oxford Handbook of Africa and Economics: Context and Concepts*.(November 2015).<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199687114.00001/oxfordhb-9780199687114-e-16>.

1972 as amended by law No 87-9 of July 15th 1987. These offences were those committed by soldiers, inside military establishments or in the course of service or of any nature in which a soldier is involved, or offences relating to firearms and firearms legislation or offences during state of emergency. Terrorism laws make citizens to be tried under military law. The law makes military tribunals to also try civilians for events that are committed neither by military. Judgment at the military tribunal is made after a collective vote of the assessors and the trial judge. Assessors are usually lay in the law. For crimes where the punishment is death, is it not outrageous to hear that such huge responsibilities are put into the hands of lay people? Scholars have held that this is a joke. Worse of all, a two-thirds majority is required to convict a suspect/accused in an inquisitorial system, whereas a unanimous verdict is the norm in an adversarial system. Again, the assessors, apart from having neither knowledge of the law nor of counterterrorism, the accused in these cases do not have the opportunity to question them about possible bias. It is unheard of that people's lives can be toyed with; in a manner as despicable as letting them undergo life-determining trials under military justice. A critical observation of article 37(3) of Cameroon's Constitution will affirm that, the judiciary in Cameroon is not an independent institution. A court which is not independent from the executive may not be impartial towards parties, if one of them is the state. *In Campbell and Fell V United Kingdom*,<sup>43</sup> the ECTHR observed that the requirement of independence entails safeguards relating to "the manner of appointment of judges, the duration of their office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence." According to Section 12 of the law on terrorism matters shall be referred to the military tribunal by a direct order to be placed on trial, issued by State Prosecutor. This too is a violation of Section 140 of the Criminal Procedure Code and Section 26 of Law No. 2006/015 of 29th December 2006 as amended and supplemented by Law No. 2011/027 of 14 December 2011 on the Judicial Organization in Cameroon makes preliminary inquiries obligatory in cases of felonies. Commencing a felony with direct orders without preliminary inquiries is a miscarriage of justice. Examining magistrate experts should be permitted to carry out Preliminary Inquiry and thereafter make either a committal order or partial committal order can be issued in seizing the court and not relying on mere police reports and testimonies. This jeopardizes the accused right of fair trial. Even though *Lex Speciali derogate lege generali*, special laws derogates general laws that is: the law on terrorism (special law) derogates the criminal procedure code (general), for the sake of justice and the rule of law the reverse should be the case. However, Section 2 of the terrorism law should define the crime based on its criminal acts listed in the United Nations Conventions and protocol against terrorism. It should focus on acts of terrorism specifically, be precise and concise in scope. The duration for remand in custody should be that established in the Section 11 of the CPC since 15 days is too lengthy a time. To delay justice, is injustice: 'Lustitiam Morari Iniustitia est'. Since the offence of terrorism is also committed by civilians, the choice of Court under Section 12 of the law on terrorism should be the High Court of every division within the national territory except for acts committed by military personnel. Also, Section 8(c) of the Military Justice code upon adoption of this recommendation, most human rights will be enjoying without fear of being termed terrorist.

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